

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATHANIEL LEE WOODARD,) No. C 10-02733 JW (PR)
Petitioner,) ORDER TO SHOW CAUSE
vs.)
R. E. BARNES, Warden,)
Respondent.)
_____)

Petitioner, a California prisoner incarcerated at the Correctional Center in Susanville, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee.

BACKGROUND

According to the petition, petitioner entered a plea of nolo contendere in Sonoma County Superior Court to possession for sale of methamphetamine and admitted two prior strikes. (Pet. at 2.) Petitioner was sentenced to 6 years in state prison on May 29, 2008. (Id.)

Petitioner appealed the conviction; the state appellate court affirmed the conviction and the state high court denied review. (Id. at 3.) Petitioner also filed

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1 state habeas which were denied. (*Id.* at 5.) Petitioner filed the instant federal habeas
2 petition on June 22, 2010.
3

4 **DISCUSSION**

5 **A. Standard of Review**

6 This court may entertain a petition for a writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that
8 he is in custody in violation of the Constitution or laws or treaties of the United
9 States.” 28 U.S.C. § 2254(a).

10 It shall “award the writ or issue an order directing the respondent to show
11 cause why the writ should not be granted, unless it appears from the application that
12 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

13 **B. Legal Claims**

14 Petitioner raises the following grounds for federal habeas relief: 1) the stop of
15 the vehicle was not based on a reasonable and factual basis of any criminal activity;
16 2) petitioner challenges the lawfulness of “officer pat-search” and claims that he was
17 unlawfully detained; and 3) the officer exceeded the scope of a lawful pat-search and
18 therefore “all evidence seized was illegal search of seizure.” (Pet. at 6.) Liberally
19 construed, petitioner’s claims appear cognizable under § 2254 and merit an answer
20 from respondent.

21
22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown,

24 1. The clerk shall serve by certified mail a copy of this order and the
25 petition and all attachments thereto on respondent and respondent’s attorney, the
26 Attorney General of the State of California. The clerk also shall serve a copy of this
27 order on petitioner.

28 2. Respondent shall file with the court and serve on petitioner, within

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1 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
2 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
3 habeas corpus should not be issued. Respondent shall file with the answer and serve
4 on petitioner a copy of all portions of the state trial record that have been transcribed
5 previously and that are relevant to a determination of the issues presented by the
6 petition.

7 If petitioner wishes to respond to the answer, he shall do so by filing a
8 traverse with the court and serving it on respondent within **thirty (30) days** of his
9 receipt of the answer.

10 3. Respondent may file a motion to dismiss on procedural grounds in lieu
11 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
12 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall
13 file with the court and serve on respondent an opposition or statement of non-
14 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file
15 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of
16 any opposition.

17 4. Petitioner is reminded that all communications with the court must be
18 served on respondent by mailing a true copy of the document to respondent's
19 counsel. Petitioner must also keep the court and all parties informed of any change
20 of address.

21 DATED: January 24, 2011



JAMES WARE
United States District Chief Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NATHANIEL LEE WOODARD,

Case Number: CV10-02733 JW

Petitioner,

CERTIFICATE OF SERVICE

v.

R. E. BARNES, Warden,

Respondent.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/31/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Nathaniel Lee Woodard G 18804
California Correctional Center
P. O. Box 2400
Susanville, CA 96127

Dated: 1/31/2011

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk